IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.1732 of 2008

1. **SADHU SHARAN TIWARI @ CHANDRIKA TIWARI, SON OF LATE SUBA TIWARI.**
2. **ASHOK TIWARI @ ASHOK KUMAR TIWARI, SON OF CHANDRIKA TIWARI.**
3. **MINTU TIWARI @ AJAY TIWARI, SON OF CHANDRIKA TIWARI.**
4. **SHASHI TIWARI @ SHASHI KANT TIWARI, SON OF CHANDRIKA TIWARI.**

ALL RESIDENT OF VILLAGE-JOGIYA TOLA, POLICE STATION-SIRISIYA, O.P. (CHANPATTIA), DISTRICT-WEST CHAMPARAN.
……PETITIONERS.

Versus

1. **THE STATE OF BIHAR.**
2. **VYAS TIWARI @ RAJESHWAR TIWARI, SON OF LATE KEDAR TIWARI, RESIDENT OF VILLAGE-JOGIYA TOLA, POLICE STATION-SIRISIA, O.P. (CHANPATTIA), DISTRICT-WEST CHAMPARAN.**

……..…OPPOSITE PARTIES.

For the Petitioners : M/s. Ram Adya Singh and Arjun Prasad, Advocates.
For the State : Dr. Mayanand Jha, A.P.P.
For O.P. No.2 : Mr. Sanjay Kumar No.VII,Advocate.

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O R D E R

All the four persons arrayed as accused in Complaint Case No.1066(C) of 2007 have prayed for the quashing of the order dated 14.12.2007 passed therein by the learned Chief Judicial Magistrate, West Champaran at Bettiah, whereby he has taken cognizance against the petitioners under Sections 341, 323 I.P.C.

It appears that Vyas Tiwari alias Rajeshwar Tiwari, the complainant, impleaded herein as O.P. No.2, filed the aforesaid complaint on 21.5.2007 in respect of an occurrence which took place on 18.5.2007 inter alia alleging that the accused persons with

avaricious eyes having entered into a conspiracy wanted to capture the lands of the Math and with that intention they started ploughing the fields and when the complainant and the witnesses raised protest they abused and assaulted the complainant and his witnesses and also extended threats and out of fear when the complainant fled to his house the accused persons chased him and entering into his house resorted to assaulting him and at the instance of accused Ashok Tiwari they dragged him outside the house and throwing him on to the ground assaulted him further. The intervention of the neighbours, it is said, saved the complainant from further assault. It is said that all the accused took away a tin box, kept below the palang , containing Rs.30,000/- ornaments, both silver and gold, belonging to him and while departing accused Shashi Tiwari resorted to blank firing .

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It has been submitted on behalf of the petitioners that they are innocent, have committed no offence, have been falsely implicated in this case due to dirty village politics and as a counter blast to Chanpatia (Sirisiya) P.S. Case No.63 of 2007 filed by petitioner no.1 against the son of the complainant. It has also been submitted that accused Ashok Kumar Tiwari, a constable, employed with B.S.F. and posted at Akbari Police Station, District-Pali in the district of Rajsthan was on duty on the relevant date, in proof whereof a certificate has been granted by the Officer Incharge of the Police Station which has been appended as Annexure-3 to the application. The grievance of the petitioners is that the learned

Magistrate failed to consider these aspects of the matter and mechanically took cognizance.

Unfortunately whatever submissions have been advanced by the learned counsel for the petitioners happen to be their defence and alibi which are matters that cannot be looked into in a proceeding under Section 482 Cr.P.C. and can be proved or disproved by leading evidence in course of the trial.

There is another aspect of the matter. The learned Magistrate has taken cognizance after holding an inquiry under Section 202 Cr.P.C. The well settled law on this issue as propounded in the case of Chandra Deo Versus Prokash Chandra (AIR 1963 SC 1430) is that since the object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded by him in an inquiry under Section 202 Cr.P.C., as the case may be, and he is not entitled to rely upon any material besides this.

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From the above, it would be apparent that the learned Magistrate while taking cognizance in no circumstances could have considered the alibi put forward by accused Ashok Kumar Tiwari or of the earlier police case filed by accused Chandrika Tiwari. These are issues which can specifically be raised either at the time of framing of charge or in course of the trial.

Due regard being had to the facts and the circumstances of the case, I find no merit in this application which is accordingly dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 16th of December, 2008.
Pradeep Srivastava/A.F.R.

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